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Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

W.P. No. 4016 /2004

PETITIONER : Anil Tiwari, aged 46 about years, S/o. Late Shri K.N. Tiwari, Occupation: Govt. Service, Presently posted as Sub Inspector, Police Station Civil Lines, Bilaspur, R/o. Nirala Nagar, Bilaspur District Bilaspur, Chhattisgarh

P.R. No. 4009/04
Presented by Shri Rambir Singh
dated 20-10-04

VERSUS

RESPONDENTS :

1. State of Chhattisgarh, Through: The Secretary, Government of Chhattisgarh Department of Home Affairs,, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh

2. The Director General of Police, Police Head Quarter, Raipur, Chhattisgarh

3. The Assistant Director General of Police (Discipline/Complaint), Police Head Quarter, Raipur, Chhattisgarh

4. The Inspector General of Police, Bilaspur Range, Bilaspur, Chhattisgarh

5. The Superintendent of Police, Raigarh, District Raigarh, Chhattisgarh

6. The Superintendent of Police Bilaspur, District Bilaspur, Chhattisgarh

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(134) 9 AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. No. 4016 of 2004

Petitioner : Anil Tiwari

Versus

Respondents : State of Chhattisgarh & others

Post for order on 20th February, 2007

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. No. 4016 of 2004

Petitioner : Anil Tiwari
Versus
Respondents : State of Chhattisgarh & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Mr. Ranbir Singh Marhas, Advocate for the Petitioner.
Mr. V.V.S. Murthy, Deputy Advocate General with Ms. Sunita Jain, Panel lawyer for the respondents/State.

ORDER

(Passed on this 20th day of February, 2007)

1. By this petition, the petitioner challenges the validity of the order dated 30.5.2001 (P/1), passed by the Superintendent of Police, Raigarh, whereunder punishment of withholding of one increment with cumulative effect, having the effect on revision of pay and pension etc. was imposed and the order dated 26.2.2003 (P/2), passed by the Secretary, Government of Chhattisgarh, Department of Home Affairs, through the Assistant Director General of Police (Discipline/Complaint), Police Head Quarter, Raipur, Chhattisgarh, whereby the petition filed by the petitioner was dismissed.

2. The indisputable facts in nutshell are that the petitioner was working as Sub Inspector in General Category in the Police Department. During his service, the petitioner was awarded a major punishment of withholding of one increment with cumulative effect on finding him guilty of misconduct. The

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petitioner was suspended vide order dated 29.1.6.2000 (P/7) contemplating enquiry against him.

3. The petitioner was served with a charge-sheet dated 8.8.2000 (P/5), issued by the Superintendent of Police, Raigarh, containing 7 charges. The containing 7 charges are as under :-

"1. दिनांक 24.6.2000 को प्रार्थी बंशीधर निवासी ग्राम–गिण्डोला द्वारा की गई जमीन विवाद की रिपोर्ट पर थाना प्रभारी छाल के पद पर पदस्थ रहते हुए समुचित वैधानिक कार्यवाही न कर कर्तव्य के प्रति घोर उदासीनता बरतना.

2. दिनांक 27.6.2000 को ग्राम गिण्डोला में ट्रेक्टर जलने की घटना के समय स्वयं घटना स्थल पर उपस्थित रहते हुए ट्रेक्टर में लगी आग को तत्काल बुझाने का कोई प्रयास न कर अपने पदेन कर्तव्य एवं दायित्व का निर्वहन न कर पुलिस रेग्युलेशन के कण्डिका 583 का उल्लंघन करना.

3. थाना छाल में बलवा, मारपीट एवं आगजनी जैसे गंभीर घटना की रिपोर्ट आने पर स्वयं उपस्थित रहते हुए कोई रिपोर्ट दर्ज न कर तथा अन्य प्रकरण में रवानगी दर्ज कर जिम्मेदारी से बचने का प्रयास कर कर्तव्य विमुखता एवं संदिग्ध आचरण का परिचय देना.

4. अप. क. 47/2000 धारा 302 ता. हि. थाना छाल के घटनास्थल पर पहुंचने के बाद भी वैधानिक कार्यवाही न करना तथा कोरे फार्म पर पंचानों, गवाहों के हस्ताक्षर लेकर संदेहास्पद कार्यवाही करना.

5. हत्या के अपराध के घटनास्थल ग्राम गलीमार से वापस थाना आने के बावजुद ग्राम गिण्डोला में घटित मारपीट बलवा एवं आगजनी की घटना को नजर अंदाज कर ग्राम हाटी धरमजयगढ़ रवाना होकर जिम्मेदारी से जानबुझकर बचने की नीयत से रवाना होना.

6. दिनांक 5.7.2000 को रक्षित केन्द्र रायगढ़ में आमद देने के तत्काल बाद बिना किसी सुचना या अनुमति के रक्षित केन्द्र (मुख्यालय) से अनुपस्थित होकर घोर अनुशासनहीनता एवं विभागीय आदेशों का उल्लंघन करना.

7. उपरोक्त कृत्य कर थाना प्रभारी के समस्त कर्तव्यों को निष्ठापुर्वक ईमानदारी से पूर्ण न कर पुलिस रेग्युलेशन के कण्डिका 64 (2) का उल्लंघन कर अपने आपको थाना प्रभारी के अयोग्य साबित करना."

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4. The preliminary enquiry was conducted by the Sub-Divisional Officer (Police) and in the enquiry he found that out of 7 charges, charges No. 2, 3 and 6 were proved and charge No. 7 was partly proved, whereas charges No. 1, 4 and 5 were not proved.

5. The Superintendent of Police did not agree with the finding of the enquiry report on charge No. 5 and after notice, returnable in three days, held that charge No. 5 also proved against the petitioner. The Superintendent of Police thereafter by the order dated 30.5.2001 (P/1) imposed punishment of withholding of one increment with cumulative effect.

6. The petitioner preferred an appeal before the Inspector General of Police, which was dismissed. Thereafter, the petitioner preferred a mercy petition before the State Government, which was also dismissed, vide order dated 26.6.2003 (P/2).

7. The petitioner has not averred any ground in the pleading. However, Shri Ranbir Singh Marhas, learned counsel appearing for the petitioner would submit the sole ground that the order of punishment of withholding of one increment with cumulative effect, passed by the Superintendent of Police was incompetent under the Regulation 221 of the M.P. Police Regulations. Learned counsel further contended that imposition of withholding of one increment with cumulative effect is a major penalty and the Superintendent of Police has no power to impose the same on the employees holding the post of Sub-Inspector.

8. Mr. V.V.S. Murthy, learned Deputy Advocate General with Ms. Sunita Jain, learned Panel lawyer appearing for the

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respondents/State would submit that admittedly withholding of one increment with cumulative effect is a major penalty as is clear from the Regulations 214 of the M.P. Police Regulations. The Superintendent of Police can impose the punishment as specified in Regulation 214 (i and iv) and Regulation 215 (a and b), in case of the Sub-Inspector and Assistant Sub-Inspector. Learned counsel fairly concedes that the order passed by the Superintendent of Police, Raigarh suffers from jurisdictional error and is incompetent. Learned counsel would further submit that the jurisdictional error in passing the impugned order of imposition of punishment of withholding of one increment with cumulative effect by an incompetent officer has been cured later on by dismissal of the appeal. Thus, the order is valid and legal.

9. I have heard learned counsel appearing for the parties and perused the pleadings and records appended thereto.

10. For proper appreciation of the dispute involved in this case, it is necessary to quote the relevant provisions i.e. Regulation 214, Regulation 215, Regulation 221 and Regulation 222 of the M.P. Police Regulations, which are as under :

> "214. Punishment – Kinds of – Without prejudice to the provisions of any law or any special orders for the time being in force, the following penalties may, for good and sufficient reasons, be imposed upon any member holding a post in a Subordinate Police Service:-
>
> (i) Censure.
>
> (ii) Withholding of promotion.
>
> (iii) Withholding of increments of pay including stoppage at an efficiency bar or stagnation allowance.
>
> (iv) Reduction to a lower post or time scale or reduction to a lower stage in the time scale of pay for a

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specified period with further direction as to whether or not the member of the Subordinate Police Service will earn increments of pay or the stagnation allowance, as the case may be, during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the further increments of his pay or stagnation allowance.

xxx xxx xxx xxx

215. Punishment of non-gazetted officers.- In addition to the above, the following penalties may be imposed on non- gazetted officers:-

(a) Fine to any amount not exceeding a month's pay.

(b) Removal from any office of distinction or special emolument.

(c) Supersession.

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221. Power of S.P.- An Assistant Inspector-General or a Superintendent exercises the following powers of punishment:-

(a) Power to inflict any of the punishments specified in Regulations 214 to 217 on head constables and constables.

(b) Power to inflict on Sub-Inspectors and Assistant Sub-Inspectors, the penalties specified in Regulation 214 (i) and (iv) or in Regulation 215 (a) and (b) or to withhold the increment of a Sub-Inspector and an Assistant Sub-Inspector for a period of one year from the date on which it falls due.

(c) Power to reduce the pay of Sub-Inspector and an Assistant Sub-Inspector.

[1][c-1] Power to inflict the punishment of censure on Inspectors].

(d) Power to suspend any non-gazetted officer of police pending inquiry into his conduct.

222. Power of D.I.G.- A Deputy Inspector-General exercises the following powers of punishment:-

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(a) Power to suspend any non-gazetted officers pending enquiries into their conduct.
(b) Power to inflict any of the punishments specified in Regulations 216 and 217 on head constables and constables.
(c) Power to inflict on head constables, constables, Assistant Sub-Inspectors, Sub-Inspectors and officers of equivalent ranks any of the punishments specified in Regulations 214 and 215.
[2][(d) Power to inflict on Subedar, Assistant Police Prosecutors, Police Prosecutors Inspectors and officers of equivalent ranks any of the punishments specified in Regulations 214 and 215, other than the punishments for removal, dismissal or compulsory retirement from service.]"

11. I have examined the above stated regulations and submissions made by the parties. It is clear that the Superintendent of Police, Raigarh has power of imposing penalty of "Censure" as specified in Regulation 214 (i) and reduction to a lower post or time scale or reduction to a lower stage in the time scale of pay for a specified period with further direction as to whether or not the member of the Subordinate Police Service will earn increments of pay or the stagnation allowance, as the case may be, during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the further increments of his pay or stagnation allowance on the Sub-Inspector and Assistant Sub-Inspector. There is no mention of withholding of one increment with cumulative effect in Regulation 214. Thus, the same was supplemented by the Executive Instructions in Memo No. Pu.Mu./23B/2/915/96, dated 28.5.1996 and in Memo No. PuMu/2/Nama/S-2/392/2000 Bhopal, Dated 24th April, 2000, wherein it is clearly provided that

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imposition of withholding of one increment with cumulative effect is a major penalty.

12. The Hon'ble Supreme Court in its order dated 25th April, 1994 passed in **State of Madhya Pradesh and others vs. Radhika Prasad Dubey** (Civil Appeal No. 1232 of 1994) held as under:-

"The view of the tribunal in quashing the reduction of the appellant to a lower stage in time scale of pay for two years, later reduced to one year by the appellate officer terming it as a minor penalty equivalent to withholding of increments and as a sequator holding the respondent entitled for consideration of promotion by the department committee as Circle Inspector after 1985, does not commend to us. In term, there of a direction was issued to the departmental committee to review the case or the respondent. The view of the Tribunal there on is obviously wrong. A major penalty continues to be a major penalty even though its a effect in minimized to slip down to loss of emoluments for a shorter period. The Tribunal was therefore, wrong in directing the Departmental Promotion Committee to consider the cases of respondent for promotion as on 1985. We are therefore of the view that the said committee is not obliged to consider the case of respondent as directed. It is therefore, evident that imposition of withholding of one increment with cumulative effect is a major penalty and the same cannot be imposed by the Superintendent of Police as per Regulation 221 read with 214 of the M.P. Police Regulations.

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13. In **Mysore State Road Transport Corporation vs. Mirja Khasim Ali Beg and another and other connected matter**[1], the Supreme Court held that the original order of dismissal of the first respondents being without jurisdiction and as such void and inoperative having been passed in contravention of the provisions of Article 311 (1) of the Constitution, the order passed on appeal by the General Manager could not cure the initial defect.

14. The Supreme Court, while considering the issue asto whether the defect in the initial order can be cured by later point of time by order of a superior authority in the case of **Badrinath vs. Government of Tamil Nadu and others**[2], held in para 27, as under:-

> "27. This flows from the general principle applicable to "consequential orders". Once the basis of a proceeding is gone, may be at a later point of time by order of a superior authority, any intermediate action taken in the meantime - like the recommendation of the State and by the UPSC and the action taken thereon - would fall to the ground. This principle of consequential orders which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders. In other words, where an order is passed by an authority and its validity is being reconsidered by a superior authority (like the Governor in this case) and if before the superior authority has given its decision, some further action has been taken on the basis of the initial order of the primary authority, then such further action will fall to the ground the moment the superior authority has set aside the primary order."

15. For the reasons stated hereinabove, it is held that subsequent orders, dismissing the appeal of the petitioner, passed by the Inspector General of Police and passed by the State Government

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do not cure the initial defect i.e. imposition of withholding of one increment with cumulative effect by an incompetent authority.

16. As a result and for the discussions made hereinabove, this petition is allowed and the order dated 30.5.2001 (P/1), passed by the Superintendent of Police, Raigarh and the order dated 26.2.2003 (P/2), passed by the Secretary, Government of Chhattisgarh, Department of Home Affairs, through the Assistant Director General of Police (Discipline/Complaint), Police Head Quarter, Raipur, Chhattisgarh are quashed. The petitioner shall be entitled to consequential benefits flowing from quashing of the impugned orders. No order as to costs.

17. It is ordered accordingly.

Sd/-
Satish K. Agnihotri
Judge

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1. AIR 1977 SC 747
2. (2000) 8 SCC 395

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